

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

SCOTT AND RHONDA BURNETT, RYAN HENDRICKSON, JEROD BREIT, SCOTT TRUPIANO, JEREJMY KEEL, HOLLEE ELLIS, and FRANCES HARVEY, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, RE/MAX LLC, and KELLER WILLIAMS REALTY, INC.,

Defendants.

Case No.: 4:19-cv-00332-SRB

Judge Stephen R. Bough

**DEFENDANTS' PROPOSED JURY INSTRUCTION  
REGARDING SETTLING PARTIES**

On October 10, 2023, the Court directed the parties to submit proposed jury instructions that would disclose the fact that Anywhere Real Estate Inc. and RE/MAX LLC have settled the claims against them. (Doc. 1210.) The Defendants have moved the Court to reconsider that order and have submitted a proposed instruction explaining that Anywhere and RE/MAX are both alleged co-conspirators and the jury should not speculate as to the reasons for their absence from trial or hold that absence against any other party. (Doc. 1211 and 1213.) Without waiving their motion for reconsideration and in compliance with the Court's October 10 directive, the Defendants submit the attached proposed alternative jury instructions that would disclose the fact

of settlement to the jury while also cautioning the jury that such settlements are not evidence of liability and should not be considered for that purpose.

Dated: October 11, 2023

**Counsel for HomeServices of America, Inc.,  
BHH Affiliates, LLC, HSF Affiliates, LLC**

*/s/ Robert D. MacGill*  
Robert D. MacGill, *pro hac vice*  
Scott E. Murray, *pro hac vice*  
Matthew T. Ciulla, *pro hac vice*  
Patrick J. Sanders, *pro hac vice*  
MacGill PC  
156 E. Market St.  
Suite 1200  
Indianapolis, IN 46204  
(317) 721-1253  
robert.macgill@macgilllaw.com  
matthew.ciulla@macgilllaw.com  
scott.murray@macgilllaw.com  
patrick.sanders@macgilllaw.com

Jay N. Varon, *pro hac vice*  
Jennifer M. Keas, *pro hac vice*  
jvaron@foley.com  
jkeas@foley.com  
FOLEY & LARDNER LLP  
3000 K Street NW, Suite 600  
Washington, DC 20007  
(202) 672-5300

Brian C. Fries  
bfries@lathropgage.com  
LATHROP GAGE LLP - KCMO  
2345 Grand Avenue, Suite 2200  
Kansas City, MO 64108-2618  
(816) 292-2000

**Counsel for Defendant NATIONAL  
ASSOCIATION OF REALTORS®**

*/s/ Ethan Glass*  
Ethan Glass (*pro hac vice*)  
Samantha Strauss (*pro hac vice*)  
Georgina Inglis (*pro hac vice*)  
COOLEY LLP  
1299 Pennsylvania Avenue, NW  
Suite 700  
Washington, DC 20004-2400  
(202) 776-2244

Respectfully submitted,

**Counsel for Keller Williams Realty, Inc.**

*/s/ David R. Buchanan*  
David R. Buchanan  
dbuchanan@bjpc.com  
BROWN & JAMES, PC-KCMO  
2345 Grand Boulevard  
Suite 2100  
Kansas City, MO 64108  
(816) 472-0800

Timothy Ray, *pro hac vice*  
timothy.ray@hklaw.com  
HOLLAND & KNIGHT LLP  
150 North Riverside Plaza, Suite 2700  
Chicago, IL 60606  
(312) 263-3600

David C. Kully, *pro hac vice*  
david.kully@hklaw.com  
Anna P. Hayes, *pro hac vice*  
anna.hayes@hklaw.com  
HOLLAND & KNIGHT LLP  
800 17th Street NW, Suite 1100  
Washington, DC 20530  
(202) 469-5415

Jennifer Lada, *pro hac vice*  
jennifer.lada@hklaw.com  
HOLLAND & KNIGHT LLP  
31 West 52nd Street, 12th Floor  
New York, NY 10019  
(212) 513-3513

Dina W. McKenney, *pro hac vice*  
dina.mckenney@hklaw.com  
HOLLAND & KNIGHT LLP  
1722 Routh Street, Suite 1500  
Dallas, Texas 75201  
(214) 969-1757

[eglass@cooley.com](mailto:eglass@cooley.com)  
[sastrauss@cooley.com](mailto:sastrauss@cooley.com)  
[ginglis@cooley.com](mailto:ginglis@cooley.com)

Beatriz Mejia (*pro hac vice*)  
COOLEY LLP  
3 Embarcadero Center, 20th Floor  
San Francisco, CA 94111  
(415) 693-2000  
[mejiab@cooley.com](mailto:mejiab@cooley.com)

Sarah Topol (*pro hac vice*)  
COOLEY LLP  
55 Hudson Yards  
New York, NY 10001  
(212) 479-6000  
[stopol@cooley.com](mailto:stopol@cooley.com)

Charles W. Hatfield (MO Bar # 40363)  
Alexander C. Barrett (MO Bar # 68695)  
STINSON LLP  
230 W. McCarty Street  
Jefferson City, MO 65101  
(573) 636-6263  
[chuck.hatfield@stinson.com](mailto:chuck.hatfield@stinson.com)  
[alexander.barrett@stinson.com](mailto:alexander.barrett@stinson.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 11, 2023, an electronic copy of the foregoing was filed with the Clerk of the Court by using the CM/ECF system, and service upon all counsel of record will be accomplished by the CM/ECF system.

*/s/Robert D. MacGill*  
Robert D. MacGill